STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1843

State of Minnesota,
Respondent,

vs.

Bryce Monroe Muir,
Appellant.

Filed September 17, 2018
Affirmed
Reilly, Judge

Carver County District Court
File No. 10-CR-17-373

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mark Metz, Carver County Attorney, David W. Hunt, Assistant County Attorney, Chaska, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Kirk, Presiding Judge; Reilly, Judge; and Smith, Tracy M., Judge.

U N P U B L I S H E D O P I N I O N

REILLY, Judge

Appellant Bryce Monroe Muir challenges his felony-level threats-of-violence conviction, arguing that the evidence is insufficient to support his conviction. We affirm.

FACTS

The present appeal stems from appellant's conviction for committing a felony-level threats-of-violence crime against his then-girlfriend, S.B. In April 2017, S.B. called the police to report that appellant threatened to take her possessions during a fight. The following morning, S.B. again called the police and stated that appellant took her vehicle during an argument. Police officers arrived at the couple's home and learned that appellant was the registered owner of the vehicle. S.B. told the officers that appellant threatened to kill her and "jiggled his left front pocket," which S.B. took as a threat because appellant often carried a gun in his pocket. S.B. told the officers that appellant did not want to go back to prison and would "die by suicide by cop."

Appellant returned home later that afternoon, and the argument continued. S.B. texted a friend with the message, "I think [appellant] is coming here to kick my a--." S.B.'s friend anonymously reported the threat to the police department, prompting the officers to return to the home for a welfare check. Upon approaching the front door, a police officer heard "some yelling and some commotion" inside the home, including "loud bangs, like something being thrown against the wall or being moved around." The officer heard appellant yell, "I'm going to f--king kill you." An officer reached S.B. on her cell phone and S.B. whispered that she was being threatened. Officers convinced appellant to let S.B. leave the house. S.B. appeared "very scared" and told the officers that she was afraid of appellant and feared he was going to beat her up or kill her.

Officers eventually persuaded appellant to come out of the house and placed him under arrest. The state charged appellant with one felony count of committing a threats-

of-violence crime. The district court issued a Domestic Abuse No Contact Order (DANCO), prohibiting appellant from having contact with S.B. When appellant violated the DANCO, the state amended the complaint to include five misdemeanor DANCO-violation charges. Appellant waived his right to a jury trial, and the case proceeded to a bench trial. The district court found appellant guilty of all charges. This appeal follows.

D E C I S I O N

Appellant challenges the sufficiency of the evidence underlying his conviction for committing a felony-level threats-of-violence crime. Our review of a sufficiency-of-the-evidence challenge is limited to a "painstaking analysis of the record" to determine whether the evidence, when viewed in a light most favorable to the conviction, was sufficient to support the conviction. *State v. DeRosier*, 695 N.W.2d 97, 108 (Minn. 2005) (quotation omitted). We will not disturb the verdict if the fact-finder, "acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense." *State v. Ortega*, 813 N.W.2d 86, 100 (Minn. 2012). In evaluating the sufficiency of the evidence, we employ the same standard of review for both bench and jury trials. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011).

To convict appellant for a felony-level threats-of-violence crime, the state must demonstrate that appellant threatened, directly or indirectly, to commit a felony-level crime of violence, and acted either with a purpose to terrorize another, or in reckless disregard of the risk of causing such terror. Minn. Stat. § 609.713, subd. 1 (2016). "Terrorize" is defined as causing "extreme fear by the use of violence or threats." *State v. Schweppe*, 306

Minn. 395, 399, 237 N.W.2d 609, 613 (1975). A "threat" is a declaration of an intention to injure another by some unlawful act. *Id*. "The test of whether words or phrases are harmless or threatening is the context in which they are used." *Id.*

Where, as here, an element of the offense rests on circumstantial evidence, we apply a heightened standard of review. *State v. Harris*, 895 N.W.2d 592, 601 (Minn. 2017); *State v. Al-Naseer*, 788 N.W.2d 469, 474 (Minn. 2010) (holding that a conviction based on circumstantial evidence warrants heightened scrutiny). First, the reviewing court identifies the circumstances proved, deferring to the fact-finder's acceptance of the circumstances proved and rejection of evidence conflicting with those circumstances. *State v. Silvernail*, 831 N.W.2d 594, 599 (Minn. 2013). At this stage in the analysis, we assume that the court, acting as fact-finder, "believed the state's witnesses and disbelieved any evidence to the contrary." *State v. Caldwell*, 803 N.W.2d 373, 384 (Minn. 2011) (quotation omitted). "This is especially true where resolution of the case depends on conflicting testimony, because weighing the credibility of witnesses is the exclusive function of the [fact-finder]." *State v. Pieschke*, 295 N.W.2d 580, 584 (Minn. 1980). At the second stage of review, we "examine independently the reasonableness of all inferences that might be drawn from the circumstances proved, including inferences consistent with a hypothesis other than guilt." *State v. Porte*, 832 N.W.2d 303, 310 (Minn. App. 2013) (quotations omitted).

With respect to the first prong of the heightened-scrutiny analysis, the following circumstances are proved. Appellant and S.B. argued over the course of two days. On the afternoon of the second day, S.B. texted her friend that she feared appellant was going to "kick [her] a--." Police officers performed a welfare check at the home on the basis of this

report. A responding officer heard yelling and loud "bangs" inside the house, which were later discovered to be caused by appellant throwing a baby gate at S.B. and shoving a chair across the room. The officer heard appellant tell S.B., "I'm going to f--king kill you." During a police interview several days later, S.B. stated that she was afraid of appellant. At trial, S.B. testified that she told police officers she was afraid appellant would kill her. The circumstances proved by the state are consistent with appellant's guilt. *See Silvernail*, 831 N.W.2d at 599.

The second step requires us to consider whether the circumstances proved are inconsistent with any reasonable hypothesis other than guilt. *Al-Naseer*, 788 N.W.2d at 473-74. Appellant argues that while the circumstances may support a finding of guilt, the circumstances may equally support a reasonable inference that appellant's threats were the product of transitory anger. Transitory anger is short-lived anger that is not intended to terrorize. *State v. Taylor*, 264 N.W.2d 157, 160 (Minn. 1978). The threats-of-violence statute is not intended "to authorize grave sanctions against the kind of verbal threat which expresses transitory anger [but] which lacks the intent to terrorize." *State v. Jones*, 451 N.W.2d 55, 63 (Minn. App. 1990), *review denied* (Minn. Feb. 21, 1990). Nevertheless, a person can commit a felony-level threats-of-violence offense without having a specific intent to terrorize, and the general intent requirement is satisfied when the perpetrator disregards a known, substantial risk that the threat will terrorize another. *State v. Bjergum*, 771 N.W.2d 53, 57 (Minn. App. 2009), *review denied* (Minn. Nov. 17, 2009).

The evidence does not support a determination that appellant's anger was transitory or fleeting in nature. The argument continued over the course of two days and the police

were contacted on three separate occasions, suggesting that appellant's anger cannot be characterized as "transitory." *See State v. Fischer*, 354 N.W.2d 29, 34 (Minn. App. 1984) (calling it "a mockery to suggest [defendant's] actions were spur-of-the-moment threats" when threatening behavior continued for six hours), *review denied* (Minn. Dec. 20, 1984). The district court determined that appellant's threat that he would "f--king kill" S.B., coupled with his actions of throwing items around the home, was done in "reckless disregard of the terror" it might cause her. We agree. Further, a victim's reaction to a threat may provide circumstantial evidence bearing on the element of the defendant's intent. *Schweppe*, 306 Minn. at 401, 237 N.W.2d at 614. The district court found that S.B. whispered into the phone that she was being threatened and feared that appellant would harm her for speaking with the police. The only reasonable inference, given the totality of the circumstances, is that appellant committed a felony-level threats-of-violence crime against S.B.

In sum, we determine that sufficient evidence in the record exists to permit the fact-finder to conclude beyond a reasonable doubt that appellant was guilty of violating Minn. Stat. § 609.713, subd. 1, and we therefore affirm.

Affirmed.